In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.18896 of 2005

Date of Decision: 23.5.2007

Kaur Singh and Another

…Petitioners.

Versus

Punjab State Electricity Board and Others.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE ARVIND KUMAR

Present: Mr.H.S.Batth, Advocate
for the petitioners.

Mr.Ajay Tewari, Advocate
for the respondents.

JUDGMENT

M.M.KUMAR, J.

This judgment will dispose of C.W.P. Nos.18896 & 19959 of 2005 and Nos.206 & 230 of 2006 filed under Article 226 of the Constitution as the common question of facts and law are involved in all these writ petitions. Facts are being referred from C.W.P. No.18896 of 2005.

The prayer made by the petitioners is for quashing order dated 9.11.2005 (Annexure P1) dismissing the petitioner Kaur Singh, from service

on the ground that he was convicted by the learned Additional Sessions Judge, Bathinda, in case FIR No. No.70 dated 1.9.1993 under Sections 225 & 186 of the Indian Penal Code. Brief facts of the case are that the petitioners have been working as Linemen with the Punjab State Electricity Board (for brevity 'the Board'). A case FIR No.70 dated 1.9.1993, P.S. Bhikhi, District Mansa was registered against them and the learned Additional Sessions Judge vide his judgment dated 13.11.2003 convicted the petitioners under Sections 225 and 186 IPC and they were sentenced for six months rigorous imprisonment and a fine of Rs.500/- each under Sections 225 and 186 IPC. The petitioners filed Criminal Appeal No.2162-SB of 2003 before this Court along with Criminal Misc. No.54613 of 2003. The appeals were admitted and the sentence was suspended by this Court on 25.11.2003. It was on the basis of the conviction that the petitioners have been dismissed from service. The order dated 9.11.2005, dismissing the petitioner Kaur Singh from service which reads as under:-

PUNJAB STATE ELECTRICITY BOARD

OFFICE ORDER NO.301 Dated: 9.11.2005

Whereas Sh.Kaur Singh, L.M. S/o Sh.Amar Singh, working in D.S. S/Divn. PSEB, Bhikhi under D.S. Division, PSEB, Budhlada, as ALM was convicted in case registered at Bhikhi Police Station vide FIR No.70 dated 1.9.93 under Section 224/225/186/324/342/353/ 506 of IPC. (The official was intercepted in some cognizable offence).

Whereas, the case was tried in the Court of Sh.Jaspal Singh, Addl. Sessions Judge, Bathinda. Sh.Kaur Singh ALM now L.M. Convicted on dated

13.11.2003 and was awarded 6 months rigorous imprisonment and fine Rs.500/- (Rs. Five hundred only) by the Hon'ble Court U/s 225 IPC.

Whereas, Sh.Kaur Singh, L.M., made an appeal in the Punjab and Haryana High Court, Chandigarh against the orders passed by Sh.Jaspal Singh, Addl. Sessions Judge, Bathinda and the Hon'ble Punjab and Haryana High Court, Chandigarh, passed orders on the appeal of Sh.Kaur Singh, L.M., wherein, the bail has been allowed and the sentence given by the lower Court is suspended.

Whereas, keeping in view the instructions issued by Secretary, PSEB, Patiala, memo No.101511/102161/LB-3(24)144/95 dated 7.8.95, it has been decided by the undersigned being appointing authority to dismiss Sh.Kaur Singh LM from services of the Board, due to his act and conduct which lead to his conviction, as per powers conferred under regulations 5/9 read with regulation 14(1) of P.S.E.B., Employee's (P&A), Regulation 1971, with immediate effect.

So, Sh.Kaur Singh LM, whose particulars are given below is dismissed from the service of the Board with immediate effect:-

1. Name : Sh.Kaur Singh, LM.
2. Father's Name : Sh.Amar Singh
3. Date of Birth : 21.5.49

4. Present Address : DS, Division, Mansa.

5. Present Posting : -do-

Sd/-
Dy.Chief Engineer,
D.S. Circle, Bathinda".

A perusal of the impugned order does not reveal that the conduct of the petitioner, which has led to his conviction has been considered and is found to be of such a serious magnitude that it warrants his dismissal from service. It is well settled that conviction alone cannot constitute the basis of a dismissal order of an employee unless the competent authority has considered the conduct of the employee, which has led to his conviction. In that regard, reliance may be placed on Constitutional Bench judgment of Hon'ble the Supreme Court in the case of **"Union of India v. Tulsi Ram Patel" 1985 (2) S.L.R. 576**. The observations made in paragraph 127 of the judgment, which are relevant to the issue reads as under:-

> "To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of penalty and, if so, what that penalty should be. For the purpose it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case and the various factors set out in Challapan's case. This, however, has to be done by it ex-parte and by itself. Once the disciplinary authority reaches the conclusion

> that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant".

It is, thus, evident from the perusal of the aforementioned para of the judgment that numerous factors are required to be taken into account by the competent authority because the conviction alone cannot automatically entail dismissal, removal or reduction in rank. It is also clear that various factors mentioned in the judgment of a Constitution Bench of seven Hon'ble Judges in the case of **"The Divisional Personnel Officer Southern Railway and another v. T.R.Chellappan (1976) 3 SCC 190** would be required to be considered. At this stage, it would be appropriate to extract the following observations from **T.R.Chellappan's case** (supra):-

> "Proviso (a) to Article 311(2), however, completely dispenses with all the three stages of departmental inquiry when an employee is convicted on a criminal charge. The reason for the proviso is that in a criminal

trial the employee has already had a full and complete opportunity to contest the allegations against him and to make out his defence .....”

XXXX XXXX XXXX

XXXX XXXX

The word 'consider' has been used in contradistinction to the word "determine'. The rule making authority deliberately used the word 'consider' and not 'determine' because the word 'determine' has a much wider scope. The word 'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that maybe passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311

(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R.Chellappan in Civil Appeal No.1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark

> upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction".. (emphasis added)

The views of Hon'ble the Supreme Court in the aforementioned judgment have been followed and applied by this Court in the case of **"Kulwant Singh v. The Deputy District Primary Education Officer, Gurdaspur 1997(1) S.C.T. 282**.

The principles laid down in the aforementioned authoritative judgment of Hon'ble the Supreme Court, if are applied to the facts of the present case then it becomes evident that the impugned order does not reflect any consideration of conduct of the petitioners which have led to their conviction. The judgment of the Criminal Court was required to be read by the competent authority which has passed the order and then after due application of mind it was required to be concluded as to whether the petitioners were worthy of retention in service or they are to be reduced in rank or any other suitable punishment was required to be inflicted.

In the present case Regulation 14(i) of Punjab State Electricity Board Employees' (Punishment and Appeal) Regulations, 1971 is pari-materia with Rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968, which was under consideration in **T.R.Chellappan's case** (supra) and

the same reads as under:-

> **"SPECIAL PROCEDURE IN CERTAIN CASES**
>
> 14. Notwithstanding anything contained in Regulations 8, 9, 10, 11, 12 and 13:-
>
> (i) where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge"
>
> XXXX XXX XXXX XXX"

Once the Rule 14(i) of the Punjab State Electricity Board Employees' (Punishment and Appeal) Regulations, 1971 and proviso (a) to Article 311(2) of the Constitution are pari-materia, then it has to be concluded that the views expressed by Hon'ble the Supreme Court in the aforementioned judgment would fully govern and apply to the facts of the present case.

The competent Authority was also required to consider the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have, on the administration and other extenuating circumstances or redeeming features, if any present in the case. A perusal of the impugned order dated 9.11.2005 (Annexure P1) does not show any such application of mind. The competent authority appears to have followed the approach that the conviction ex-facie could constitute the basis of the order of dismissal, which is not sustainable in law. Therefore, the impugned order is liable to be quashed.

For the reasons stated above, these petitions are allowed. The order dated 9.11.2005 (Annexure P1) dismissing the petitioners from service is hereby quashed. Similarly the orders dated 6.12.2005 (Annexure P1) in C.W.P. No.19959 of 2005, dated 25.8.2005 (Annexure P1) in C.W.P. No.206 of 2006 and dated 9.11.2005 (Annexure P1) in C.W.P. No.230 of 2006, respectively, are quashed. As a result, the petitioners are reinstated in service. Respondents, however, are granted liberty to pass a fresh order in accordance with law, if so advised.

A photocopy of this judgment be placed in all the connected cases.

(M.M.KUMAR)
Judge

May 23, 2007 **(ARVIND KUMAR)**
dkb **Judge**